

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.9340 of 2001
Date of Decision: 25.01.2008

J.R.Verma

Petitioner

Versus

State of Haryana and others

Respondents

CORAM:- HON'BLE MR. JUSTICE JASBIR SINGH

Present: Ms.Sangita Dhanda, Advocate for the petitioner
Shri Harish Rathee, Sr. D.A.G. Haryana
Shri D.S.Patwalia, Advocate for respondent No.4

Jasbir Singh, J.

This order will dispose of Civil Writ Petition Nos.5889 of 2001 and 9340 of 2001, involving similar question of law and facts. For facility of reference, facts are being mentioned from CWP No.9340 of 2001.

By filing this writ petition, the petitioner has laid challenge to the order dated 16.2.2001 (Annexure P/14), vide which respondent No.4 was appointed as Secretary of respondent No.3. It is his primary grievance that respondent No.4 was appointed without following any procedure and her entry was made through the back door. It is further contention of the petitioner that he, being senior-most employee with respondent No.3, an experience hand, more suitable, his claim has wrongly been rejected. It has been prayed that appointment of respondent No.4 as Secretary of respondent No.3, be quashed and directions be issued to the respondents to consider case of the petitioner, along with other eligible candidates for the post in question.

Briefly, it is case of the petitioner that he is a post graduate and was appointed as a Clerk with respondent No.3 in the year 1973. He was asked to perform the duties of a stenographer and on account of that, a special pay of Rs.25/- per month was sanctioned in his favour, in the month of June 1979. He, after passing the competency test, was promoted as an 'Assistant' in the month of July 1987. Without getting regular promotion, he had been performing duties of Assistant Secretary between 1979 and 1999. The petitioner made a representation that keeping in view his experience and qualifications, he be promoted to the post of Assistant Secretary. His case was recommended by Shri Chander Bhan, IRS, who saw his work as an observer in Vidhan Sabha Elections. On 8.6.2000, post of Secretary had fallen vacant on account of death of Shri M.S.Bhalla. The petitioner again represented, staking his claim for the above said post. However, without taking note of his experience and qualifications, respondent No.4, who was only a fresh graduate, having no experience, was taken in as Secretary of respondent No.3, for a period of six months, on temporary/ ad hoc basis, on 20.6.2000. She was granted extension of six months more on 20.12.2000. On 8.12.2000, the petitioner again made a representation that his claim for promotion/ selection be considered for the post of Secretary. Without issuing any advertisement, inviting applications, also without considering claim of the petitioner and other eligible candidates, service of respondent No.4 was regularized on 16.2.2001 (Annexure P/14). Hence, this writ petition.

After notice, reply has been filed by the respondents, wherein claim of the petitioner has been refuted. Respondent No.3 has defended appointment of the respondent No.4, as its Secretary, by placing reliance

upon Rule 20 of the Constitution (Aims and Objects) of respondent No.3, which reads thus:-

“20. (i) All appointments in the District Branch shall be made by the President. The President shall have the power to determine the terms of employment and pay and allowances of the staff of the District Branch and cases would be laid before the Executive Committee for confirmation.

(ii) Notwithstanding any thing contained in Rule 20(i) the appointment of the Secretary of the District Branch shall be made by the President with the approval of the State and shall not be annulled except with previous concurrence of the State Branch.”

It has further been stated that respondent No.4 was appointed, keeping in view her merits and she was a better candidate. It has also been stated that the petitioner is a quarrelsome person, is in the habit of making complaints, to cause tension in the office and to terrorise his colleagues. Respondent No.4 in her reply has taken a preliminary objection that writ petition against respondent No.3, being a private society, was not competent and the same be dismissed accordingly. To justify her appointment, reliance has been placed upon Rule 20 of the Constitution of respondent No.3, referred to above and further it has been mentioned that the petitioner is a hot tampered person. When he started harassing respondent No.4, she was compelled to file a criminal case against him. It has been prayed that the writ petition, having no substance, be dismissed.

Counsel for the parties addressed their arguments by stating those very objections, as have been taken in their pleadings.

First of all it is necessary to decide preliminary objection, taken by respondent No.4, that civil writ petition under Articles 226/227 of the Constitution of India is not maintainable against respondent No.3. It has been stated that respondent No.3 is a private society, its members are private individuals and no pervasive control lies with the government. By placing reliance upon judgment of the Hon'ble Supreme Court in General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. v. Satrughan Nishad and ors., JT 2003(8) 235, it has been stated that the writ petition deserves to be dismissed, being not maintainable against respondent No.3.

Contrary to this, it has been argued by counsel for the petitioner that in view of it's Aims and Objects, dependence upon the State/ its functionaries for finances and constitution of its Executive Committee, the respondent No.3 would fall within the definition of 'other authorities', against whom writ petition can be filed, by invoking the provisions of Articles 226/227 of the Constitution of India. Counsel for the petitioner has also placed reliance upon judgments of this Court in District Red Cross Society, Sirsa v. Radha Kishan Rajpal and another, 2005(1) RSJ 375 and Om Parkash Sharma v. Indian Red Cross Society and another, 2005(4) RSJ 281, to contend that civil writ petition, against the Indian Red Cross Society, was competent.

After analyzing the arguments raised by counsel for both the parties, this Court feels that the objection raised by respondent No.4 deserves rejection. To say that the writ petition against District Red Cross Society was not competent, reliance has been placed upon judgment of the Hon'ble Supreme Court in the case of Satrughan Nishad (supra). This Court feels that no benefit of the ratio of judgment, referred to above, can be extended in favour of the respondents. That was a case, in which, the

Hon'ble Supreme Court was dealing with a case of Sugar Mill, management of which was registered as a Society. By taking note of a fact that control of the State government over the Society, was not pervasive, it was observed that the writ petition was not competent against that Sugar Mill. It was further observed by their Lordships of the Supreme Court that the principles laid down in the case of Ajay Hasia and others v. Khalid Mujib Sehravardi and ors. (1981) 1 SCC 722, are to be kept in mind to determine as to whether establishment/ authority(s) in question would fall within the parameters of definition of 'other authorities', which are subject to the jurisdiction of High Court under Articles 226/227 of the Constitution. In Ajay Hasia's case(supra), it was observed thus:-

*“The tests for determining as to when a corporation can be said to be an instrumentality or agency of government may now be culled out from the judgment in the **International Airport Authority** case. These tests are not conclusive indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression 'other authorities', it must be realized that it should not be stretched so far as to bring in every autonomous body which has some nexus with the government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the **International Airport Authority** case as follows:-*

- 1. One thing is clear that if the entire share capital of the corporation is held by government, it would go a*

long way towards indicating that the corporation is an instrumentality or agency of government.

- 2. Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.*
- 3. It may also be relevant factor whether the corporation enjoys monopoly status which is State conferred or State protected.*
- 4. Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.*
- 5. If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of government.*
- 6. "Specially, if a department of government is transferred to a corporation, it would be a strong factor supportive of this inference" of the corporation being an instrumentality or agency of government.*

*If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of government, it would, as pointed out in the **International Airport Authority** case, be an 'authority'*

and, therefore, 'State' within the meaning of the expression in Article 12."

If facts of the present case are analysed in the light of the principles laid down by Hon'ble Supreme Court in above mentioned case, it will become clear that respondent No.3 would fall within the ambit of expression 'other authorities' appearing under Article 12 of the Constitution of India.

It is an admitted fact that Red Cross Societies are the creation of a statute known as Red Cross Society Act, 1920. Respondent No.3, in its meeting dated 23.3.1976 (Annexure P/4), has adopted its constitution, Aims and Objects of respondent No.3, reads thus:-

1. The Aims and objects of the District Red Cross Branch

Ambala shall be:-

- a) Hospital Welfare Community Health and Sanitation.*
- b) Relief of sick, suffering and wounded persons.*
- c) Relief of soldiers, sailors, airmen and other military personal*
- d) Maternity and Child Welfare*
- e) To organize youths welfare activities and help to the youth wing (Junior Red Cross) of the Red Cross to organize Family planning Programme with particular reference to motivation, education and clinical facilities.*
- f) Blood Transfusion Service.*
- g) Training of Doctors, Lady Health Visitors, Midwives, Nurses, Nurse, Dais, etc.*
- h) Disaster and Emergency relief of all kinds*

- i) Help to Haryana State Red Cross Branch of the Indian Red Cross Society.*
- j) Assistance to St. John Ambulance Association and Charitable Institutions approved by the State Branch or the Indian Red Cross Society.*
- k) All other objects mentioned in the first schedule of Act XV of 1920 (with amendments upto date)."*

It has further been mentioned in the Constitution of respondent No.3 that the Deputy Commissioner of the District, shall be its President. Chief Medical Officer will be its Vice President. The Executive Committee shall consist of 10 members. The above said two officers, along with District Education Officer, shall be the Ex-officio members. Two more members shall be nominated by the President i.e. the Deputy Commissioner. It has further been stated that all vacancies occurring, among the members of the Executive Committee, shall be filled by nomination by the President, for the remaining period. Regarding source of finances of respondent No.3, Rule 6 reads as under:-

"6. Collection of Funds:

- i) The District Branch may collect funds for its activities and expenses through membership, fairs, fetes, variety shows, Lucky Bag, flags, seals and drives etc.*
- ii) The District Branch may receive donations in cash or kind and gifts or any properties movable or immovables, subject to any trust or condition for any trust or condition for any one or more of its objects."*

In paragraph 4 of his replication, the petitioner has advanced the following explanation to the preliminary objections, raised by respondent No.4:-

“4. Preliminary objection No.4 is not at all tenable. It is submitted that funds for Red Cross Society are contributed by the Panchayat Samities, donated by school children, collected from public by the Govt. officers like Distt. Education Officer, Tehsildars, Sub Divisional Magistrates, Excise & Taxation Officers, Distt. Food and Supplies Controller etc. etc. State/ Central Govt. has exempted the Red Cross from various taxes i.e. Octroi, Sales Tax, Entertainment Tax, Income Tax, departmental charges of PWD for construction of Red Cross buildings. Even land to Red Cross is being given by the Govt. free of any cost. Thus Red Cross funds directly/ indirectly are public funds. Red Cross Society is a statutory body and maintains its statutory rights while taking decisions at national/ international level. Thus, it cannot go against the service rules/ principles of natural justice while dealing with the services of its employees as has been held by this Hon’ble Court in Santosh Rani v. Indian Red Cross Society i.e. CWP No.13347 of 1995. Appointment of Secretary Mr.Dahiya, previous Secretary, late Shri M.C.Bhalla and even of the petitioner were made through public notice/ advertisement. In Ambala Red Cross Society Shri Babu Ram Clerk, Shri Dilbagh Singh, Driver and other regular employees were also appointed through Employment Exchange/ advertisement. Even recently Mrs.Ruby Gulati, Lady Health Visitor was not regularized and was terminated from service, because she was

not appointed through Employment Exchange and this fact is very well within the knowledge of the respondents.”

The above statement of the petitioner was not controverted by any of the respondents.

Contention of the petitioner that respondent No.3 is being controlled by its President i.e. the Deputy Commissioner and the finances are also being raised through government agencies, becomes clear when we look into contents of document Annexure P/19. Vide that letter, the petitioner was asked to look after the affairs of Old Age Home in Ambala to manage its day to day problems. The petitioner was further directed to collect day to day amount from Computerise projects of Tehsil office Brara and Naraingarh and deposit that money in the office of respondent No.3 in time. It is virtually an admitted fact that to collect funds, tickets are being sold through the functionaries of the State. To arrange money, fairs are being organized by respondent No.3 without any payment of entertainment tax to the State Government. The Aims and Objects, as mentioned above, of respondent No.3 are akin to the functions, to be performed by the State Government and not by any private individual. The Constitution of the Committee indicates that the functionaries of the Society are closely related with the government, which shows a deep pervasive control over the Red Cross Society by the government. In view of above mentioned facts, this Court is of the opinion that the writ petition under Articles 226/227 of the Constitution of India is maintainable against the Red Cross Society. This question also came up for consideration before a Division Bench of this Court in Radha Kishan Rajpal's case (*supra*), wherein it was held that the writ petition was competent against the Red Cross Society. The view expressed by a Division Bench in the case of Radha Kishan Rajpal's case

(*supra*) was followed by another Division Bench of this Court in Om Parkash Sharma's case (*supra*).

In view of facts mentioned above, preliminary objection raised by respondent No.4 stands rejected.

Now it is to be seen whether appointment of respondent No.4 was justified or not. It is an admitted fact that the petitioner is a post graduate, he entered service of respondent No.3 as Clerk in the year 1973. On account of his performing duties as Stenographer, he was granted special pay of Rs.25/- per month, in the year 1979. He was promoted as an Assistant in the year 1987. Record further reveals that without getting promotion, he had been performing the duties of Assistant Secretary of respondent No.3. His case for appointment to the post of Secretary was recommended by the then President Shri Ram Niwas, IAS (Annexure P/6). He also got recommendation regarding his work and conduct from Shri Chander Bhan, IRS. His work and conduct was also appreciated by various officers as is indicative from document Annexure P/8. Document Annexure P/19 also indicates that the petitioner had been working on various duties in the office of respondent No.3. Despite all his qualifications, he was ignored. As against this, respondent No.4, who was only a fresh graduate, having no administrative experience, was inducted in the office as a Secretary, it appears, it was done in a very arbitrary manner.

It is apparent from the records that after joining post of Secretary with respondent No.3, respondent No.4 initiated criminal complaint against the petitioner. She appeared as a witness in the Court and an extract from her statement (Annexure P/22), reproduced hereinafter, clearly demonstrates that as to how and under what circumstances, she was given the post of Secretary of respondent No.3:-

“Prior to joining the service I had been perhaps studying. I had completed the B.A. in the year 1996, in which I secured Second Division and thereafter I started preparing for the H.C.S. examination. I have not passed any examination for appointment as Secretary, Red Cross. My name had neither been recommended by the Subordinate Selection Board nor by the H.P.S.C. nor my name had been recommended by the Employment Exchange. I have not participated in any interview. I had been given direct appointment. Prior to that I have no experience of service. The qualification and the experience of the accused Janak Raj Verma are much more than me. I do not remember whether anybody may have been appointed as Secretary Red Cross by promotion. Any advertisement in any newspaper has not been got published for filling up of my post. When I was appointed, then Shri Om Parkash Chautala was the Chief Minister, Haryana, who has even now remained as such till 23rd March, 2005. Again said he remained as such till 27th February, 2005. My husband Sh.Surinder Kumar Ghai is the worker of this very party, to which party Sh.Chautala is related. I have not remained as worker of this party. It is correct that the Chief Minister Shri Chautala usually visits my house. There may be any function of my family, he attends the same. The appointment had not been given to me by Chautala Sahib. I had just submitted my request in this regard to the Worthy D.C. The Worthy D.C. has directly appointed me on the post of Secretary. The officers of the District Administration had not accompanied the C.M. to

my residence. It is correct that the District Administration is responsible to make arrangements of security etc. at the place which is to be visited by the C.M. The officers of the District Administration did not come, only the security persons had been coming. Sometime the Hon'ble C.M. had been visiting my residence without giving information to the District Administration. At that time any officer had not been accompanying him. He had been visiting alone. Only his security men, who remain present in his vehicle, were accompanying him. It is correct that the Hon'ble C.M. was used to stay at my residence for hours together. The sons of the Hon'ble C.M. had never visited my residence. The M.L.As. had been usually visiting my residence. The Worthy D.C. had provided employment to me immediately because I was unemployed, I was in need of the employment. Therefore, the Worthy D.C. appointed me directly on the post of Secretary. At that time I had been appointed on contract basis on the salary of Rs.8000/- per month. Now I am in the scale of Rs.10,000 – 13,900. This scale is of First Class Officer.”

Admissions made by respondent No.4, in her statement, are sufficient to say that a favour was shown, when appointing her as Secretary of respondent No.3. No procedure to make appointment was adopted. She was brought in through the back door, by giving her ad hoc appointment for six months vide order Annexure P/11 on 20.6.2000. In that letter, it was specifically mentioned that her appointment was purely on temporary basis and it will last, till regular person was appointed against the post. She was given an extension of six months and thereafter without considering claim

of the petitioner and other employees, whose representation(s) was pending, she was regularized on 16.2.2001, in a very arbitrary manner.

Reliance of counsel for the respondents on Rule 20 of the Constitution of respondent No.3, to say that appointment was valid, is not justified. That Rule only provides as to who was competent to make appointment of Secretary but it does not mean that the President was competent to appoint a person at his own whims and fancies, without inviting applications and considering claim of other eligible candidates. Respondent No.3 is virtually a State dominated agency and to make any appointment, regular procedure of inviting applications is required to be adopted. It is apparent from the records that previous Secretary Shri M.C.Bhalla was appointed by inviting applications through publication in a newspaper The Tribune on 19.4.1974. Even by way of precedent, it was necessary for respondent No.3 to fill up the post, which had fallen vacant after death of Shri M.C.Bhalla, by inviting applications through publication in some newspaper. By not doing so, claim raised by other eligible candidates, including the petitioner, was rejected without even considering the same.

Hon'ble the Supreme Court has deprecated the Policy of making appointments without inviting applications from open market. Reference in that regard can be made to the ratio of judgment of Hon'ble Supreme Court in The Excise Superintendent Malkapatnam, Krishna District, Andhra Pradesh v. K.B.N. Visweshwara Rao & ors., 1996(3) SLR 649 and also to the ratio of judgment of Hon'ble Supreme Court in Pankaj Gupta & ors. V. State of Jammu & Kashmir & ors., JT 2004 (8) SC 531.

Policy to make ad hoc appointments and then to regularize service of the incumbent(s), was not approved by their Lordships

of Supreme Court in M.P.State Coop. Bank Ltd. Bhopal v. Nanuram Yadv & ors., 2007(5) Recent Apex Judgments 590 and also by a Constitutional Bench of Hon'ble Supreme Court in Secretary, State of Karnataka and others v. Umadevi and others, JT 2006(4) SC 420.

In view of facts mentioned above, this writ petition is allowed, order Annexure P/14, appointing respondent No.4 as Secretary of respondent No.3, is quashed. Directions are issued to respondent No.4 to fill up that post by inviting applications through publication in widely circulated newspaper(s) in the region. The petitioner is permitted to apply for appointment, as per norms. No order as to costs.

January 25, 2008
gk

(Jasbir Singh)
Judge